

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
SEPTEMBER 8, 2011**

PRESENT: Jeffery Dearing, Acting Chair; Brian Gildea, Clerk; Angelo Colasante; Kenneth Gordon; Carol Amick; Stephen Henning

ABSENT: Jeffrey Cohen, Chair

GUEST: Walter St. Onge, Selectmen Liaison

Mr. Dearing introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA Assistant introduced themselves.

PRESENTATION: Mr. Colasante read the notice of the hearing.

PETITION #005-12 – F.W. Webb, 160 Middlesex Turnpike, seeks a Special Permit per Section 7.1.2 of the Zoning By-Law to construct addition within front yard setback.

Mr. Dearing reminded the applicants that Mr. Gildea has recused himself from this hearing, so the voting members will be himself, Mr. Colasante, Mr. Gordon, Ms. Amick, and Mr. Henning.

Fred Hamwey, of Hamwey Engineering, greeted the Board members and reiterated that they had been before the ZBA a few months back for a Variance, but it was ultimately determined by the Building Inspector that their application was eligible for a Special Permit, as they realized the structure did not meet the required 100-foot setback, making the lot pre-existing non-conforming. Mr. Hamwey said that they are here tonight, therefore, to request a Special Permit under Section 7.1.2 of the Zoning By-Law for an addition to the existing building within the front yard setback. He noted that the required front yard setback is 100 feet, and this addition will bring them to approximately 88 feet.

Mr. Hamwey showed an enlarged copy of the Town's Assessor's map which shows the zoning districts. He pointed out that this property is the sole Industrial District property in the area, and it is surrounded by Commercial and Residential Districts. He pointed out that this is, therefore, the only building in the area with the required 100-foot setback requirement; most of the others have 35-foot front setback requirements.

Mr. Hamwey handed the Acting Clerk a letter from the owner of the property authorizing Hamwey Engineering to act on the owner's behalf. Mr. Colasante thanked him and said he would mark that letter as an exhibit.

Mr. Hamwey noted that the Middlesex Turnpike widening will be altering the property line slightly, so they are not exactly sure of the setback. He asked whether the Board would be willing to grant a few extra feet just to ensure that the structure isn't built a foot or two outside the setback allowed by the Special Permit. Mr. Dearing asked what

number the applicants would be comfortable with. Mr. Hamwey said that a maximum of 85 feet would be sufficient. Mr. Dearing asked the applicant to note the 85-foot dimension on the plan and initial it, and this is the plan on which the Board will vote.

Mr. Dearing opened the hearing to the public. With no comments or questions from the Board or those in attendance, Mr. Dearing closed the public hearing.

DELIBERATIONS:

Mr. Dearing said that the ruling has officially come back from the Code Enforcement Director that a Special Permit is the appropriate vehicle for zoning relief for this request, not a Variance. He said that the two requirements of a Special Permit are that the project is not injurious or detrimental or injurious to the neighborhood and is in keeping with the intent and purpose of the By-Law. He said he thinks this addition meets those requirements. The other Board members agreed.

Mr. Colasante asked whether the Board wanted to condition the motion on the Building Department receiving a final as-built before construction begins. Mr. Dearing said he didn't believe such a condition was necessary, as the Building Department always requires a certified as-built before construction anyway.

MOTION:

Mr. Colasante moved to grant F.W. Webb, 160 Middlesex Turnpike, a Special Permit per Section 7.1.2 of the Zoning By-Law to construct addition within front yard setback, as per Exhibits A, B, and C.

Ms. Amick seconded the motion.

Voting in favor: Dearing, Colasante, Gordon, Amick, and Henning

Voting against: None

Abstained: None

Recused: Gildea

The motion carried unanimously, 5-0-0.

Mr. Dearing explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Colasante read the notice of the hearing.

PETITION #003-12 – CONTINUATION – F.W. Webb, 160 Middlesex Turnpike, seeks a Variance from Section 6.2.6 of the Zoning By-Law and from Table II Use Regulations to construct addition within front yard setback.

Mr. Dearing said the only piece of business left for F.W. Webb, now that the Special Permit has been granted, is to vote on the Variance request. Mr. Hamwey said he would like to withdraw the application for the Variance at this time.

MOTION:

Mr. Colasante moved that the Board withdraw F.W. Webb, for 160 Middlesex Turnpike.

Ms. Amick seconded the motion.

Mr. Gordon said that the motion should technically be to grant the applicant's request to withdraw the application without prejudice.

AMENDED MOTION:

Mr. Gordon moved to grant the request of F.W. Webb, 160 Middlesex Turnpike, to withdraw without prejudice the request for a Variance from Section 6.2.6 of the Zoning By-Law and from Table II Use Regulations to construct addition within front yard setback.

Ms. Amick seconded the amended motion.

Voting in favor of the: Dearing, Colasante, Gordon, Amick, and Henning

Voting against: None

Abstained: None

Recused: Gildea

The motion carried unanimously, 5-0-0.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION # 006-12 – Mark Bailey, 30 Woodland Road, seeks a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct second floor addition onto a non-conforming structure and entryway within front yard setback.

Mark Bailey, the owner of 30 Woodland Road, greeted the Board and said that he and his family currently reside in this classic Cape style house, which they are outgrowing as they have a baby due in December. He said he is requesting a Special Permit to build a second floor addition, along with a small front entry vestibule.

Mr. Bailey stated that he has talked with his neighbors and all are in support of this addition; he handed the Clerk a sheet which has signatures showing their support. He said he believes this addition will be very attractive and will improve the character of the neighborhood; he said some houses in the area have been torn down recently and large

Colonials have been built in their place, which he feels decreases the character of the neighborhood, so this addition is a step in the right direction for the area.

Ms. Amick asked whether any of the other Capes in the neighborhood have had additions. Mr. Bailey replied that several of the houses have had additions in the past few years; he estimates that approximately a quarter of the homes in the area have either had additions or been torn down to build much larger houses.

Mr. Gildea talked with the applicant about the plot plan and the dimensions of the entryway addition. He asked for confirmation that the entryway will be the only addition to the footprint. Mr. Bailey confirmed that that was correct.

Mr. Dearing opened the hearing to the public.

With no comments or questions from those in attendance, Mr. Dearing closed the public hearing.

DELIBERATIONS:

Mr. Dearing said this project clearly requires a Special Permit, as the lot size and setbacks are non-conforming. He said that the two requirements of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. He stated that he feels that this project meets those conditions and he is comfortable with this request. Mr. Gildea agreed, noting that the only structure even pushing past the existing setback is the entryway, and he believes that is de minimis. The other Board members agreed.

MOTION:

Mr. Gildea moved to grant to Mark Bailey, 30 Woodland Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to construct second floor addition onto a non-conforming structure and entryway within front yard setback, as set forth in Exhibit B; the Board has also received a support letter marked as Exhibit A.

Ms. Amick seconded the motion.

Voting in favor: Dearing, Gildea, Colasante, Gordon, and Amick

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Dearing explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

Mr. Dearing wished the applicant luck with his project. Ms. Amick congratulated him on the upcoming birth of the baby. Mr. Bailey thanked the Board members for their time.

BUSINESS MEETING:

Ms. Amick noted that several months ago there was discussion about providing a hand-out in the Town Hall for anyone who wanted to know how to appeal a Zoning Board decision. The Board members talked about this idea and said it would be worth looking into this again creating such a hand-out in the near future.

There was discussion about the Town's policy on recusing oneself from a hearing. Mr. Gordon said that at a future meeting, when the Chair is present, he would like to have a more in-depth conversation about when it is or is not appropriate to recuse oneself.

MOTION:

Ms. Amick moved to adjourn the meeting.

Mr. Colasante seconded the motion.

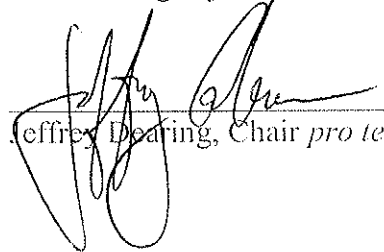
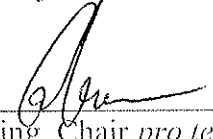
Voting in favor: Dearing, Gildea, Colasante, Gordon, Amick, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 8:15 PM.

FOR   9/22/11
Jeffrey Dearing, Chair *pro tem* Date

Respectfully Submitted,

Scott Gould
ZBA Assistant